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Attorneys for Defendant Walter Meier (Manufacturing), Inc.

The Honorable Garr M. King

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

**TODD YANDELL,**

Plaintiff,

v.

**WALTER MEIER HOLDING AG**, a Swiss Corporation; **WMH TOOL GROUP, INC.**, a Tennessee Corporation; **WALTER MEIER (MANUFACTURING) INC.**, a Tennessee Corporation; **WALTER MEIER HOLDING CORPORATION**, a Delaware Corporation,

Defendants.

**Case No. 3:11-CV-266-KI**

DEFENDANT WALTER MEIER  
(MANUFACTURING), INC.'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S  
COMPLAINT

Jury Trial Requested

Defendant Walter Meier (Manufacturing), Inc., individually and improperly named as  
WMH Tool Group, Inc. ("Walter Meier"), answers Plaintiff's Complaint as follows:

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(MANUFACTURING), INC.'S ANSWER  
AND AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S COMPLAINT

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1. Walter Meier is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1, and therefore denies the same.

2. Walter Meier is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2, and therefore denies the same.

3. In response to paragraph 3, Walter Meier admits only that it is a corporation organized under the laws of the State of Washington, its principal place of business is 427 New Sanford Rd., LaVergne, Tennessee, and it has, in the past, manufactured and distributed certain saws, including certain "Powermatic" saws. Walter Meier denies the remainder of the allegations in paragraph 3.

4. Walter Meier is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4, and therefore denies the same.

5. In response to paragraph 5, Walter Meier admits only that it is a corporation organized under the laws of the State of Washington, its principal place of business is in LaVergne, Tennessee, it has, in the past, manufactured and distributed certain saws, and WMH Tool Group, Inc. is now known as Walter Meier Manufacturing, Inc. Walter Meier is without knowledge or information sufficient to form a belief as to the truth the remainder of the allegations, and therefore denies the same.

6. Walter Meier is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6, and therefore denies the same.

7. Walter Meier is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7, and therefore denies the same.

8. Walter Meier is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8, and therefore denies the same.

9. In response to paragraph 9, Walter Meier incorporates its responses to paragraphs 1 through 8.

10. Walter Meier denies the allegations in paragraph 10, including its subparagraphs (1) through (3).

11. Walter Meier denies the allegations in paragraph 11.

12. Walter Meier denies the allegations in paragraph 12.

13. Walter Meier denies the allegations in paragraph 13.

14. Walter Meier is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14, and therefore denies the same.

15. Walter Meier is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15, and therefore denies the same.

16. In response to paragraph 16, Walter Meier incorporates its responses to paragraphs 1 through 15.

17. Walter Meier denies the allegations in paragraph 17.

18. Walter Meier denies the allegations in paragraph 18.

19. Except as expressly admitted, Walter Meier denies the allegations in Plaintiff's Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

20. Plaintiff's Complaint fails, in whole or in part, to state ultimate facts sufficient constitute a claim upon which relief can be granted against Walter Meier.

**SECOND AFFIRMATIVE DEFENSE**

**(Lack of Jurisdiction)**

21. Plaintiff's Complaint should be dismissed for lack of personal jurisdiction and lack of subject matter jurisdiction.

**THIRD AFFIRMATIVE DEFENSE**

**(Improper Venue)**

22. Plaintiff's Complaint should be dismissed for lack of proper venue or, in the alternative, transferred to another Court pursuant to the doctrine of forum non conveniens.

**FOURTH AFFIRMATIVE DEFENSE**

**(Insufficient Service of Process)**

23. Plaintiff has failed to serve Walter Meier properly and/or timely.

**FIFTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

24. Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to commence this action within time required by the applicable statute of limitations.

**SIXTH AFFIRMATIVE DEFENSE**

**(Statute of Ultimate Repose)**

25. Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to commence this action within the time required by the applicable statute of ultimate repose.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Failure to Join and Serve Party Under Fed. R. Civ. P. 19)**

26. Plaintiffs claims are barred, in whole or in part, for failure to join and/or serve an indispensable party to this action.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Comparative Fault)**

27. Plaintiff's damages, if any, were caused or contributed to by Plaintiff's own negligence.

**NINTH AFFIRMATIVE DEFENSE**

**(Alteration)**

28. To the extent the product described in the complaint was altered, changed, or otherwise modified by persons or entities other than Walter Meier, the modifications, changes, or alterations were a proximate, intervening, and/or superseding cause of Plaintiff's damages, if any.

**TENTH AFFIRMATIVE DEFENSE**

**(Misuse)**

29. Plaintiff's damages, if any, were caused by the misuse and/or abuse of the product described in the complaint, of which the misuse and/or abuse was not reasonably foreseeable.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Failure to Follow Warnings)**

30. Plaintiff was advised, informed, and warned of potential hazards and/or dangers, if any, associated with the normal or foreseeable use of the product described in the Complaint, and Plaintiff failed to follow such warnings.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Fault of Others)**

31. Plaintiff's damages, if any, were caused or contributed to by the acts, omissions, and/or fault of other persons or entities, over which or whom Walter Meier neither controlled nor had the right to control. These act, omissions, and/or fault constitute an independent, intervening, and/or sole cause of such damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Mitigation of Damages)**

32. Plaintiff failed to mitigate his damages, if any, and is barred from recovering damages, in whole or in part, which could have been avoided by reasonable mitigation efforts.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Open and Obvious Condition)**

33. The conditions alleged by Plaintiff to have caused his damages, if any, were open and obvious.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(State of the Art)**

34. Plaintiff's claims are barred, in whole or in part, because the product described in the complaint was designed, manufactured, and marketed pursuant to the state of the art and when the product left Walter Meier's control, no practical and technically feasible alternative formulation was available that would have prevented the harm for which Plaintiff seeks to recover without substantially impairing the safety, efficacy, or usefulness of the product for its intended use.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Restatement (Second) of Torts § 402A, cmt d)**

35. Plaintiff's strict product liability claim is barred, in whole or in part, by ORS 30.920(3) and its incorporation of the RESTATEMENT (SECOND) OF TORTS § 402A cmt. d, limiting strict product liability to those situations where the product is sold in the condition in which expected to reach the ultimate user or consumer.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Restatement (Second) of Torts § 402A, cmt g)**

36. Plaintiff's strict product liability claim is barred, in whole or in part, by ORS 30.920(3) and its incorporation of the RESTATEMENT (SECOND) OF TORTS § 402A

cmt. g, limiting strict product liability to eliminate those situations when a product's condition is safe at the time of delivery but "subsequent mishandling or causes" make it harmful by the time it is consumed, placing the burden of proof on Plaintiff to prove that the product was in a defective condition at the time it left the seller's hands.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Restatement (Second) of Torts § 402A, cmt h)**

37. Plaintiff's strict product liability claim is barred, in whole or in part, by ORS 30.920(3) and its incorporation of the RESTATEMENT (SECOND) OF TORTS § 402A cmt. h, limiting strict liability by eliminating those situations where "abnormal handling" or "abnormal preparation for use" occur to eliminate the seller's liability, unless the seller had reason to anticipate the abnormal handling or preparation.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Restatement (Second) of Torts § 402A, cmt i)**

38. Plaintiff's strict product liability claim is barred, in whole or in part, by ORS 30.920(3) and its incorporation of the RESTATEMENT (SECOND) OF TORTS § 402A cmt. i, limiting strict product liability to those products that meet definition of "unreasonably dangerous."

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Restatement (Second) of Torts § 402A, cmt j)**

39. Plaintiff's strict product liability claim is barred, in whole or in part, by ORS 30.920(3) and its incorporation of the RESTATEMENT (SECOND) OF TORTS § 402A cmt. j,



providing that where warning is given the seller may reasonably assume that it will be read and heeded.

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

##### **(Restatement (Second) of Torts § 402A, cmt k)**

40. Plaintiff's strict product liability claim is barred, in whole or in part, by ORS 30.920(3) and its incorporation of the RESTATEMENT (SECOND) OF TORTS § 402A cmt. k, limiting the definition of defective and "unreasonably dangerous" to exclude unavoidably unsafe products when such product properly prepared and accompanied by proper direction and warning.

#### **TWENTY-SECOND AFFIRMATIVE DEFENSE**

##### **(Alteration or Misuse)**

41. Plaintiff's damages, if any, were the result of unforeseen alteration or misuse of the product by another or by user error and not the result of Walter Meier's conduct. Further, if the evidence shows the product described in the complaint was modified or altered, Plaintiff's claims are barred, in whole or in part, pursuant to ORS 30.915.

#### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

##### **(Reservation of Right to Amend to Assert Additional Defenses)**

42. Walter Meier gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and therefore reserves the right to amend its answer to assert these defenses.

#### **REQUEST FOR JURY TRIAL**

43. Walter Meier requests trial by jury on all issues so triable.

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WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Walter Meier Manufacturing, Inc., individually and improperly named as WMH Tool Group, Inc., seeks judgment in its favor, including an award of its costs and disbursements, and such other relief the Court deems just and appropriate.

DATED this 9th day of March, 2011.

s/ Christopher S. Marks, OSB # 022052  
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**CERTIFICATE OF SERVICE**

I certify that I served the foregoing **DEFENDANT WALTER MEIER (MANUFACTURING), INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT** on the following attorneys by the method indicated below on the 9th day of March, 2011:

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